5303.

SUPREME COURT OF THE UNITED STATES.

No. 179.

THOMAS WHITBRIDGE & AL., CLAIMANTS OF THE SCHOONER FANNIE CROCKER, APPELLANTS,

vs.

JOSEPH LILL & AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print.
Record of the district court	1	1
Attachment	2	2
Marshal's return	3	2
Libel	3	2
Claim	8	5
Stipulation	9	5
Answer	11	6
Deposition of John T. Terry, witness for libellants	15	8
Deposition of Charles Westermark, witness for libellants	17	9
Deposition of Wm. N. Gesseur, witness for libellants	19	11
Deposition of Sam'l Henningway, witness for libellants	20	11
Deposition of Willet Rowe, witness for libellants	22	12
Deposition of Wm. Farren, witness for libellants	23	13
Agreement	24	14
Evidence taken in open court	25	14
Deposition of Benjamin Frazier, for respondents	25	14
Cross-examined	32	18
Re-examined	34	18
Cross-examined	34	19
James Field, witness for respondents	34	19
Cross-examined	37	20
Re-examined	38	21
Cross-examined	39	21
Samuel D. Crane, witness for respondents	39	21
Examined by Judge Giles	40	22

Gideon, Printer.

	Original.	Print.
Further examined in chief	40	22
Cross-examined	40	22
Examined by Judge Giles	41	22
Capt. Jno. G. Crane, for respondents	41	22
Cross-examined	45	24
Capt. Daniel Burnett, for respondents	47	25
Cross-examined	48	26
Capt. M. Osborne, for respondents	49	26
Cross-examined	50	27
Capt. Moses Howell, for libellants	51	27
Cross-examined	52	28
Re-examined	53	29
Capt. George Weeks, for libellants	53	29
Cross-examined	54	29
Decree	54	29
Appeal bond	56	30
In the Circuit Court.		
Deposition of T. J. Clare, for the appellants	59	32
Cross-examined	62	33
William Farren, for appellees	63	34
Samuel Henningway, for appellees	65	35
Barnabas Baker, for appellees	67	36
Decree	68	37
Appeal bond	69	37
Clerk's certificate	71	39

4304

THE UNITED STATES OF AMERICA,
District of Maryland, to wit.

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-eight: present, the Honorable R. B. Taney, Chief Justice of the Supreme Court of the United States; William F. Giles, judge of Maryland district; Wm. Meade Addison, esquire, attorney; John W. Watkins, esquire, marshal; Thomas Spicer, clerk:

Among other were the following proceedings, to wit:

THE CLAIMANTS AND OWNERS OF THE SCHOONER FANNIE CROCKER, Appellants,
vs.
JOSHUA H. DILL and others, Appellees.

Be it remembered that heretofore, to wit, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and fifty-five, the said claimants and owners of the schooner *Fannie* filed in the circuit court here a record from the district court of the United States in and for the Maryland district, in the words and of the tenor following, to wit:

Record from the District Court.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit.

At a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in June, in the year of our Lord one thousand eight hundred and fifty-five: present, the Honorable William F. Giles, judge of Maryland district; Wm. Meade Addison, esq., attorney; John W. Watkins, esquire, marshal; Thomas Spicer, clerk:

Among other were the following proceedings, to wit:

JOSHUA H. DILL, JAMES C. WOODWARD, Lyman Woodward, Joseph Ames, Ansen Bevins, Isaac H. Foot, Stephen Rowe, Thomas Grannis, James Mallory, Harvey Rowe, Nehemiah Smith,
vs.
SCHOONER FANNIE CROCKER.
} Libel filed 5 April, 1855.

Be it remembered, that on the fifth day of April, in the year of our Lord one thousand eight hundred and fifty-five, the said libellants, by John H. B. Latrobe, their proctor, prosecuted and sued forth out of the district court here the writ of the United States of America of attachment against the said schooner Fannie Crocker, her tackle, apparel and furniture, in the words and of the tenor following, to wit:

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit.

[L. S.] To the Marshal for the Maryland district, greeting:

We command you that you attach, seize, take, and safely keep the schooner Fannie Crocker, her boats, tackle, apparel and furniture, to answer the libel of Joshua H. Dill and others in a cause of collision, civil and maritime, and how you shall execute this process you make known to us in our said district court for the district aforesaid, at the United States court-room, in the city of Baltimore, on the first Tuesday of June next, and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said district court, the first Tuesday in March, in the year of our Lord one thousand eight hundred and fifty-five.

THO. SPICER,
Cl'k Dist. Ct.

J. H. B. L. Issued 5 April, 1855.

Marshal's Return.

Atta'd in custody April 5th, 1855. Released by stipulation, April 7, 1855.

J. W. WATKINS,
U. S. Marshal.

Libel.

In Admiralty.

To the Honorable the Judge of the District Court of the United States for the district of Maryland:

Joshua H. Dill, James C. Woodward, Lyman Woodward, Joseph Ames, Ansen Burns, James H. Foot, Stephen Rowe, Thomas Grannis, James Mallory, Harvey Rowe, and Nehemiah Smith, owners of the schooner Henry R. Smith, hereinafter mentioned, exhibit this their libel against the schooner Fanny Crocker, whereof Crane is or lately was master, now lying in the port of Baltimore, in the district aforesaid, and within the jurisdiction of this honorable court, her boats, tackle, apparel and furniture, and against all persons lawfully intervening for their interests therein, in a cause of collision, civil and maritime. And thereupon the

said Joshua H. Dill and the owners aforesaid do articulately allege and propound as follows, to wit:

First. That the schooner Henry R. Smith is a vessel of more than twenty tons burthen, to wit, of the burthen of one hundred and thirty-four tons, or thereabouts; and at the time when the cause of action hereinafter mentioned and set forth arose, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation, between ports and places in different States and Territories of the United States.

Second. That on the ninth day of March, in the year eighteen hundred and fifty-five, the aforesaid schooner, the Henry R. Smith, being tight, staunch, and well manned and provided, sailed from Hampton Roads, in the State of Virginia, with a valuable cargo of oysters, on a voyage to the port of New Haven, in the State of Connecticut.

Third. That the said schooner, Henry R. Smith, was got under way from Hampton Roads aforesaid on the said ninth day of March, sea time, at 8 o'clock a. m., for the purpose of proceeding on the voyage aforesaid, and that she went to sea with the wind from the south, and light; that at 4 o'clock p. m. of the tenth of March, sea time, the said schooner, Henry R. Smith, took a heavy squall from the northward, and sail being shortened, lay by until the squall was over, when at five o'clock p. m. of the same day she was tacked to return to a harbor. That at 8½ o'clock p. m. of the same day, the wind being then from the northwest, and blowing a fresh breeze, and the said schooner, Henry R. Smith, heading one point to the eastward of north, and close-hauled, a schooner was seen on the larboard quarter at the distance of about ⅓ of a mile; the said strange schooner, being in ballast, sailed faster than the said Henry R. Smith, and soon came up with and abeam of the said Henry R. Smith, when she put her helm up, bore away, and coming down on said Henry R. Smith, head on, struck her abreast the cabin, and so damaged her that she sunk in a few minutes, leaving the captain of the said Henry R. Smith, Joshua H. Dill, and his crew, barely time to save their lives, which they did by getting on board of the strange schooner. That at the time of the collision aforesaid, and prior thereto, the said Henry R. Smith had a light burning, while the strange schooner had no light. That the night, however, was sufficiently clear to have enabled those on board the said *the said* Henry R. Smith to see the strange schooner, and that the people on board the latter could have readily seen the said Henry R. Smith had a proper watch been kept. That the captain of the Henry R. Smith, so soon as he saw that there was a probability or a possibility of the strange schooner falling aboard of him, put the wheel hard-up, hoping by bearing away to escape injury; captain and crew of the said Henry R. Smith being on deck at the time, and previous to said collision shouted aloud to attract the atten-

tion of those on board the strange vessel, but without effect; and the said Henry R. Smith being heavily laden with oysters, obeyed her helm but slowly, while the strange schooner sailing in ballast, or being very light, and the wind fresh, came down before it with great speed, and struck the Henry R. Smith as aforesaid before the latter could obviate the collision. That had the strange vessel kept on her course before she put up helm as aforesaid, she could have gone past the said Henry R. Smith at a proper distance, and that even after bearing away as aforesaid, the said strange schooner could have luffed so as to have gone clear. That at the time of the collision Cape Henry was bearing south and east about five miles, as near as could be judged.

Fourth. That the said schooner by which the said damage had been done proved to be the Fannie Crocker aforesaid, under the command of Crane as aforesaid, from Taunton to Baltimore, belonging to Dighton, Massachusetts, and of about 278 tons burthen. That the time of the collision the said Henry R. Smith carried as aforesaid a light on her trunk aft, which could have been seen from the said Fannie Crocker had a good look-out been kept, although the night as aforesaid was clear enough to enable those on board either vessel to see the other one.

Fifth. That, as already said, when the danger of a collision became apparent, it was impossible for the said Henry R. Smith, owing to the circumstances aforesaid, to get out of the way of the said Fannie Crocker so as to prevent the said collision.

Sixth. That at the time of the said collision, and the aforesaid loss of the said Henry R. Smith and her cargo, the libellants were the true and lawful owners of the said schooner and of her said cargo, and that the said schooner was of the value of fifty-five hundred dollars, and the said cargo was of the value of fifteen hundred dollars or thereabouts, and that by reason of careless, negligent, unskilful, and improper management of the said schooner, Fannie Crocker, and of the collision thereby occasioned of the schooner with the said Henry R. Smith, the libellants have sustained damage to the amount of seven thousand dollars, or thereabouts, for which they claim reparation in this suit.

Seventh. That all and singular the premises are true.

Wherefore the libellants pray that process in due form of law may issue against the said schooner Fannie Crocker, her boats, tackle, apparel, and furniture, and that this honorable court will pronounce for the damages aforesaid, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain, and the court is competent to give in the premises.

JOSHUA H. DILL,
For self and other owners.

JNO. H. B. LATROBE, *Proctor.*

On the 31st day of March, in the year 1855, personally appeared Joshua H. Dill, the above named libellant, and was sworn to the truth of the above libel before me.

JOHN HANAN, *U. S. Com'r.*

Claim.

To the Honorable the Judge of the District Court of the United States for the Maryland district:

And now comes Thomas Whitridge, in his own behalf, as one of the owners of the schooner Fannie Crocker, and as consignee of said schooner, intervening in behalf of the other owners of said schooner, to wit, William Cobb, of Dighton, Massachusetts, "The Old Colony Iron Company," a corporation incorporated under the laws of the State of Massachusetts, "The Taunton Copper Manufacturing Company," a corporation incorporated under the laws of Massachusetts, Albert Field, of Taunton, Massachusetts, William Busby, of New Jersey, and Gustavus G. Hankinson, of Mannahawken, New Jersey, and alleges that the above named persons and corporations, and he the said Thomas Whitridge, of the city of Baltimore, are the true and bona fide owners of the said schooner, Fannie Crocker, and that no other person is the owner thereof, and that he, the said Thomas Whitridge, is the consignee of said schooner, and that he is duly authorized to put in this claim by the owners of said schooner; and intervening as consignee as aforesaid, and in his own behalf, and in behalf of the said other owners, he prays that the said schooner may be released from the custody of the marshal on stipulation being entered into.

THS. H. WHITRIDGE.

Subscribed and sworn to this 12th day of April, 1855, before—

JOHN HANAN, *U. S. Com'r.*

Stipulation.

UNITED STATES OF AMERICA,
District of Maryland, to wit.

Be it remembered that on this twelfth day of April, in the year of our Lord one thousand eight hundred and fifty-five, before me, John Hanan, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," appear Thomas Whitridge, Horatio L. Whitridge, and Edward R. Lusby, of the district aforesaid, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be

bound in the sum of fifteen thousand dollars for the claimants of the schooner Fannie Crocker, unto Joshua Dill, James C. Woodward, Lyman Woodward, Joseph Ames, Isaac H. Foot, Stephen H. Rowe, Thomas Gannis, James Mallory, Henry Pope, Nehemiah Smith, owners of the schooner Henry R. Smith, to perform and fulfil the final order and decree of the said district court; and in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit, in and for the Maryland district; and in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States, in a certain cause now depending in the said district court, wherein Joshua H. Dill and others are libellants, and the claimants of the schooner Fannie Crocker, her tackle, &c., are respondents; and unless they so do, they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods and chattels, lands and tenements, wheresoever found or to be found.

Acknowledged before—

JOHN HANAN,
U. S. Com.

Answer.

The answer of Thomas Whitridge, of the city of Baltimore, consignee and part owner of the schooner Fannie Crocker, to the libel of Joshua H. Dill and others.

First. This respondent admits that the schooner Henry R. Smith is a vessel of about 134 tons or thereabouts, but is not informed in relation to her exact size, and supposes that she was enrolled and licensed for the coasting trade, as stated in the libel, although he has no personal knowledge of the fact.

Second. That he has no personal knowledge of the matters alleged in the second article of the libel, but believes and is willing to admit that the Henry R. Smith sailed from Hampton Roads on or about the 9th of March, 1855, to the port of New Haven, in Connecticut, and is informed that she had a cargo of oysters on board, but what was the quantity or value thereof he is unable to say.

Third. That respondent does not know and therefore cannot say whether the Smith went to sea, or what occurred on board of her, until occurrence which is hereinafter stated. That the schooner Fannie Crocker, on the 4th of March, 1855, sailed from Dighton, Massachusetts, in ballast, on a voyage to Baltimore; that between 8 and 9 o'clock p. m., on the 9th of March, or 10th by sea account, 1855, the said Fannie Crocker on her said voyage had got inside of Cape Henry; the wind was blowing heavily from about the northwest; the Fannie Crocker was heading towards the south-

ern and western shore, and it became necessary to tack, in order to alter her course; the captain gave the order for that purpose, and an ineffectual attempt was made to tack, the vessel then being under a double-reef mainsail, foresail, and jib, and in ballast trim; there was a heavy sea on, and the wind was blowing hard, as aforesaid. She failed to go round, whereupon one or two other attempts were made to tack, but without success; and an order was then given to wear ship, which is by putting the helm up against the wind to bring the vessel round before the wind; in executing this order, the main peak was lowered to enable the vessel to wear rapidly, and when the main boom jibed, or passed over the deck, the wind caught the sail and threw it over the end of the main gaff, and tore the sail from the leach rope, rendering it perfectly useless. At this time the leg of one of the seamen caught in the fore-sheet, which is the rope attached to the boom of the foresail, throwing him on the deck and injuring him severely, so that it was thought his leg was broken, and he was rendered incapable of doing duty for several weeks; all hands being on deck went to his assistance, except the captain, who was at the helm. After disengaging the seaman from his dangerous situation, he was too much injured to render further aid, and all the rest of the hands were called to haul in the mainsail, the greater part of which was dragging in the water, the captain being at the helm. The Fannie Crocker was at this time as close to the wind as she could sail; she was in ballast, and was disabled, one of her crew being severely hurt, as aforesaid, and her mainsail having been torn from its ropes and trailing in the water; a heavy wind was blowing, and she had been put out of her course by failing to tack, as aforesaid. At this juncture a vessel was seen on her starboard bow, some three or four lengths off. In order to avoid collision, the helm of the Crocker was put hard up, intending thereby to pass to the stern of the strange vessel, which being more heavily laden than the Crocker, and having more sails up, could go nearer to the wind, and when seen, was in fact on the lee bow of the Crocker, heading about one point nearer to the wind, and bringer her across the bow of the Crocker. That as the latter was then disabled from the causes above mentioned, requiring the active efforts of all hands who were capable of doing duty, and as the mainsail was on and over the starboard side, with the larboard tacks on board, being in the way of the crew who were on deck, astern of the said mainsail, actively engaged in getting it in, with the exception of the man who was forward of said sail, it was much easier for those on board of the strange vessel, which proved to be the Henry R. Smith, to see the Crocker, than for those on board the latter to see the former, and in fact, as the libellants allege, the said Crocker was seen by those on board the Smith at the distance of ⅓ of a mile, and it was also very easy for the Smith, and

it was her duty, with the Crocker full in sight, to alter her course in proper time, so as to avoid the collision, but through carelessness or unskilful management she failed to do so, and the vessels came in collision, the larboard quarter of the Smith coming in contact with the bow of the Crocker. That if the Crocker had kept on her course, as in the libel is pretended she should have done, she must necessarily have come in contact with the Smith, which was crossing the bow of the Crocker, as aforesaid, and that the Crocker could not luff, for the reason that she was sailing as near the wind as she could go.

Fourth. That the Fannie Crocker belongs to Dighton, Massachusetts; is of about 222 tons burthen; that the Smith carried no light on her trunk aft, which could be seen from the Crocker, nor was any warning given from the Smith by shouting or otherwise, which was heard on board the Crocker.

Fifth. That respondent does not know the value of the Henry R. Smith and her cargo, nor does respondent know who are the owners of the said Henry R. Smith; and he also alleges that, but for the negligence and unskilful management of the said Henry R. Smith, the collision and all damages thereupon ensuing would have been avoided.

Sixth. That soon after the collision the Smith sank; her entire crew was taken on board the Crocker, which was driven out to sea by the gale, and did not get back to port for several days, and the Crocker sustained injury from the collision, which were repaired at Norfolk, where she put in on getting back from sea as aforesaid.

Seventh. That the facts stated in this answer, which are within the knowledge of the respondent, are true as stated; and that the other facts so stated, which are not within the personal knowledge of the respondent, are true, to the best of his information and belief.

BROWN & BRUNE,
Proctors for Respondents.

Sworn to by Thomas Whitridge this 6th day of June, A. D. 1855, before me.

JOHN HANAN,
U. S. Com. for Md.

Deposition of John T. Terry, witness for libellants, taken before Charles R. Ingersoll, U. S. Comm., at the city of New Haven, in the district of Connecticut, 26th March, 1855.

I, John T. Terry, of New Haven, in New Haven county, in the State and district of Connecticut, aged fifty years, and by occupation a mariner, being duly cautioned and sworn, do depose and say, that I was mate of the schooner Henry R. Smith, of New Haven, on the 9th of March last, at the time of the collision with

the schooner Fannie Crocker in the Chesapeake bay. The first I saw of the Fannie Crocker was about ½ past 8 o'clock in the evening of the 9th of March, when she was on our weather quarter. Then she ran down until she got about abreast of us to windward. Then they kept her off and she ran afoul of us. She struck the Henry R. Smith right aft the main rigging on the larboard side, the wind being about northwest at the time, blowing fresh. Both schooners were standing one way, to the northward and eastward. When we first saw her we were both on the wind. When the Fannie Crocker struck our schooner, she cut her all down where she struck, and we saw that the Smith must soon sink. All hands of the Henry R. Smith then got aboard the Fannie Crocker, by getting on to her bowsprit, which lay right across us. The two vessels swung apart, and in a few minutes we were out of sight of the Smith. At the time of the collision Captain Dill had the wheel of the Henry R. Smith. When we saw the Fannie Crocker coming down upon us, we put up the helm, and tried in every way to keep out of her way, but we could not clear her. When we first discovered the Fannie Crocker she was about half a mile from us on our weather quarter. It was starlight, with wind clouds flying from the northwest. When she got abeam of us she was about fifty rods distant. At the time she struck our wheel was up, and we had begun to fall off, but we could not clear her. The Fannie Crocker was before the wind when she struck us, having fallen off from her course. At the time of the collision it was light enough for us to see the land around us. We could see the land as far as five miles distant; we also saw other vessels quite a good distance off. We had six hands on board the Henry R. Smith, including the cook, and all of them, with the exception of the cook, were on deck attending to their respective duties at the time of the collision. There was always a good look-out kept, and we saw the Fannie Crocker a good while before she came down upon us. The hands of the Smith were the captain, mate, and three mariners and the cook.

And further deponent saith not.

JOHN T. TERRY.

Subscribed and sworn to this 26th day of May, 1855, before me.

C. R. INGERSOLL,
U. S. Com. for Conn. District.

Deposition of Charles Westermark, witness for the libellants, taken before Charles R. Ingersoll, U. S. Com'r, at the city of New Haven, Connecticut district, 1st of June, 1855.

I, Charles Westermark, of the city of New York, in the State of New York, aged 25 years, and by occupation a mariner, being duly cautioned and sworn, do depose and say:

teen cents a Fair Haven bushel. If the schooner had arrived in New Haven at the time she ought to have arrived here, I judge her cargo would have been worth fourteen hundred dollars. I estimate this from cargoes which I sold which came out from Nansemond or left the capes with her; and in making the estimate I suppose her to have been full. The cargoes I refer to as having left the capes about the same time with her were those of the schooner Maxon Rogers, of the R. L. Kenney, and the sloop Edwin Port. I sold these three cargoes at forty-five cents per bushel, and the oysters were no better than those of the Henry R. Smith. One of the cargoes was of Nansemond oysters. I think the Henry R. Smith was fully worth five thousand dollars when she left here on her last trip. I don't think her owner would have sold her for that sum.

And further deponent saith not.

SAMUEL HENNINGWAY.

Taken, subscribed, and sworn to, this 16th of June, 1855, before me.

C. R. INGERSOLL,
U. S. Com'r.

Deposition of Willet Rowe, witness for libellants, taken before C. R. Ingersoll, U. S. Com., at the city of New Haven, dist. of Conn., 16th June, 1855.

I, Willett Rowe, of Fair Haven, in East Haven, in New Haven county, in the State of Connecticut, aged 40 years, by occupation a wholesale oyster dealer, being duly cautioned and sworn, do depose and say:

I was acquainted with the schooner Henry R. Smith from the time of her building; I have assisted in selling cargoes of oysters from out of her; I estimate her capacity for carrying oysters at 3,700 bushels; I have known her to bring that amount. If she loaded full at Nansemond on her last trip there, her cargo would have cost at Nansemond from six hundred and fifty to seven hundred dollars—depending upon the demand there at the time of loading. The value of the same cargo, if brought to Fair Haven, would have been $1,480; I make this estimate from what I know of the value of oysters that arrived here about the time she ought to have arrived, and could have, but for the accident. I was well acquainted with the schooner Henry R. Smith, and I should put her value, when she left here on her last trip, at $5,500. And further saith not.

WILLET ROWE.

Taken, subscribed, and sworn to this 16th June, 1855, before—
C. R. INGERSOLL,
U. S. Com'r.

Deposition of William Farren, witness for libellants, taken before C. R. Ingersoll, U. S. Com'r, at the city of New Haven, Connecticut district, 16th June, 1855.

I, William Farren, of Fair Haven, in the town of East Fair Haven, in New Haven county, in State of Connecticut, aged 35 years, by occupation a mariner, being duly cautioned and sworn, do depose and say:

I reside in Fair Haven, and was one of the parties that built the schooner Henry R. Smith, and I sailed in her as master for two years; I have sailed out of Fair Haven in oyster vessels ever since I was old enough to go on board a vessel, and have been master of a vessel in the trade for the last fifteen years; I am not interested in the Henry R. Smith at present, and have not been for six years. I should value the Henry R. Smith, at the time she left Fair Haven on her last trip, at $5,000. I think that would have been a fair price if thrown upon the market; I don't suppose the owners would have sold her at that price. Her capacity for carrying oysters was from thirty-seven to thirty-eight hundred bushels; the most I ever carried in her was 3,788 bushels, Fair Haven measurement; she was not solid full at that time; the cargoes of all oyster vessels vary at different times, depending upon the manner of stowing. The lowest that oysters could have been bought at Nansemond the season the H. R. Smith was there on her last trip, was $660 for a full cargo, estimating her cargo as I have. This would have been under the most favorable circumstances, and the price might have been run up for the same cargo to $770; the price depends upon the demand there at the time. The highest prices obtained in Fair Haven for cargoes which arrived there at the time she was due from Nansemond, were 45 cents per bushel. I have had pointed out to me at Nansemond the place where she loaded, and I know the oysters taken from there are of the best quality. I estimate the value of her cargo, if she arrived here full at the time when due, to have been $1,710. I was on board of the H. R. Smith before she started from here on her last trip, and had been there several times during the winter previous. She was in perfect order, and had been not a long time before newly rigged throughout. She would have commanded as high a price as any vessel of her character. And further saith not.

WILLIAM FARREN.

Taken, subscribed, and sworn to this 16th of June, 1855, before me.

C. R. INGERSOLL,
U. S. Com'r.

That I was a seaman on board the schooner Henry R. Smith on the 9th of March last, at the time of the collision with the schooner Fannie Crocker, and I witnessed all that happened at that time. The first that I saw of the Fannie Crocker was when she was on our windward quarter, about two or three miles off, I should think. This was about half-past seven o'clock in the evening, I should think. The weather was clear, blowing from the westward fresh. We could see land three or four miles distant. The land that we saw was low land. The Fannie Crocker appeared to be in ballast, and she came up on the wind from where we first saw her until she got abreast of us to windward. When she got about abeam of us, I should say she was near half a mile from us. During all this while the Henry R. Smith was on the wind going the same course with the Crocker; but the Smith was heavy loaded, and the Crocker went through the water faster than she did. Then when the Crocker had got abreast of us she fell off the wind and came right down upon us. She struck us right aft the main rigging, on the larboard quarter. Captain Dill then sung out "Boys, jump aboard," and we all got aboard the Crocker. Her anchor had caught in our main rigging, and we cut the rigging, and then the schooners parted. The rigging was cut by some one who was on board the Crocker, after we had all got on board of her. Captain Dill had the helm of the Henry R. Smith. As soon as we saw the Crocker bearing down on us, and that a collision was probable, Captain Dill put the helm hard up, and I think she was falling off a little when the Crocker struck her. She was so heavy loaded that it was hard for her to keep off. She would not mind her helm as quick as a vessel would in ballast. Nothing more could have been done on board the Smith to avoid a collision than what was done. All hands were on deck except the cook, who had just stepped below into the cabin. There was a good look-out kept on board the Henry R. Smith. If the Crocker had either luffed or kept away in time the collision would have been avoided; and if she had continued the course she was on before she kept off and bore down upon us, she would have gone clear at a proper distance. During all the time the Crocker was in sight the Smith had her light on the house, where it was her practice to keep a light during the night.

And further deponent saith not.

CHARLES WESTERMARK.

Taken, subscribed, and sworn to this 1st day of June, 1855, before me.

CHARLES R. INGERSOLL,
U. S. Com. for Conn. District.

Deposition of William N. Gesseur, witness for the libellants, taken before C. R. Ingersoll, U. S. Com'r, at the city of New Haven, in the district of Connecticut, 16th day of June, 1855.

I, William N. Guesseur, of Fair Haven, in the town of Fair Haven, in New Haven county, in the State of Connecticut, aged 38 years, by occupation a ship-builder, being duly cautioned and sworn, do say:

I am a ship-builder in the village of Fair Haven, and built the schooner Henry R. Smith. I built her about eight years ago. She has always belonged in Fair Haven, and been running from there most of the time since she was built; and I have been acquainted with her during all the time. In my judgment, she was worth fifty-six hundred dollars at the time she went on her last trip to the Chesapeake, the trip on which she was lost. I suppose her capacity for carrying oysters to have been about thirty-eight hundred bushels. I am well acquainted with the oyster vessels trading from Fair Haven and of their capacities.

And further deponent saith not.

W. N. GESSEUR.

Taken, subscribed, and sworn to, this 16th day of June, 1855, before me.

C. R. INGERSOLL,
U. S. Com.

Deposition of Samuel Henningway, witness for the libellants, taken before C. R. Ingersoll, U. S. Com'r, at the city of New Haven, in the district of Connecticut, 16th June, 1855.

And the said Samuel Henningway having been by me first cautioned and sworn, I did then carefully examine and he did thereupon depose and say as follows:

I, Samuel Henningway, of Fair Haven, in the town of New Haven, in New Haven county, in the State of Connecticut, aged 42 years, by occupation a wholesale oyster dealer, being duly cautioned and sworn, do depose and say:

I reside in Fair Haven, and have known the schooner Henry R. Smith ever since she was built. I am well acquainted with the oyster trade of Fair Haven and with the vessels concerned in it. My business for the last ten years has been selling the cargoes of oysters brought to Fair Haven from other waters. Myself and another are the only persons in Fair Haven engaged in that business. I should think the Henry R. Smith would carry thirty-seven hundred and fifty bushels of oysters when loaded. I know she would carry that amount. I know it from having seen the cargoes she has brought here and discharged, cargoes which I attended to discharging myself. At the season when she landed at Nansemond, on her last trip, the cost of oysters at Nansemond was about nine-

teen cents a Fair Haven bushel. If the schooner had arrived in New Haven at the time she ought to have arrived here, I judge her cargo would have been worth fourteen hundred dollars. I estimate this from cargoes which I sold which came out from Nansemond or left the capes with her; and in making the estimate I suppose her to have been full. The cargoes I refer to as having left the capes about the same time with her were those of the schooner Maxon Rogers, of the R. L. Kenney, and the sloop Edwin Port. I sold these three cargoes at forty-five cents per bushel, and the oysters were no better than those of the Henry R. Smith. One of the cargoes was of Nansemond oysters. I think the Henry R. Smith was fully worth five thousand dollars when she left here on her last trip. I don't think her owner would have sold her for that sum.

And further deponent saith not.

SAMUEL HENNINGWAY.

Taken, subscribed, and sworn to, this 16th of June, 1855, before me.

C. R. INGERSOLL,
U. S. Com'r.

Deposition of Willet Rowe, witness for libellants, taken before C. R. Ingersoll, U. S. Com., at the city of New Haven, dist. of Conn., 16th June, 1855.

I, Willett Rowe, of Fair Haven, in East Haven, in New Haven county, in the State of Connecticut, aged 40 years, by occupation a wholesale oyster dealer, being duly cautioned and sworn, do depose and say:

I was acquainted with the schooner Henry R. Smith from the time of her building; I have assisted in selling cargoes of oysters from out of her; I estimate her capacity for carrying oysters at 3,700 bushels; I have known her to bring that amount. If she loaded full at Nansemond on her last trip there, her cargo would have cost at Nansemond from six hundred and fifty to seven hundred dollars—depending upon the demand there at the time of loading. The value of the same cargo, if brought to Fair Haven, would have been $1,480; I make this estimate from what I know of the value of oysters that arrived here about the time she ought to have arrived, and could have, but for the accident. I was well acquainted with the schooner Henry R. Smith, and I should put her value, when she left here on her last trip, at $5,500. And further saith not.

WILLET ROWE.

Taken, subscribed, and sworn to this 16th June, 1855, before—

C. R. INGERSOLL,
U. S. Com'r.

Deposition of William Farren, witness for libellants, taken before C. R. Ingersoll, U. S. Com'r, at the city of New Haven, Connecticut district, 16th June, 1855.

I, William Farren, of Fair Haven, in the town of East Fair Haven, in New Haven county, in State of Connecticut, aged 35 years, by occupation a mariner, being duly cautioned and sworn, do depose and say:

I reside in Fair Haven, and was one of the parties that built the schooner Henry R. Smith, and I sailed in her as master for two years; I have sailed out of Fair Haven in oyster vessels ever since I was old enough to go on board a vessel, and have been master of a vessel in the trade for the last fifteen years; I am not interested in the Henry R. Smith at present, and have not been for six years. I should value the Henry R. Smith, at the time she left Fair Haven on her last trip, at $5,000. I think that would have been a fair price if thrown upon the market; I don't suppose the owners would have sold her at that price. Her capacity for carrying oysters was from thirty-seven to thirty-eight hundred bushels; the most I ever carried in her was 3,788 bushels, Fair Haven measurement; she was not solid full at that time; the cargoes of all oyster vessels vary at different times, depending upon the manner of stowing. The lowest that oysters could have been bought at Nansemond the season the H. R. Smith was there on her last trip, was $660 for a full cargo, estimating her cargo as I have. This would have been under the most favorable circumstances, and the price might have been run up for the same cargo to $770; the price depends upon the demand there at the time. The highest prices obtained in Fair Haven for cargoes which arrived there at the time she was due from Nansemond, were 45 cents per bushel. I have had pointed out to me at Nansemond the place where she loaded, and I know the oysters taken from there are of the best quality. I estimate the value of her cargo, if she arrived here full at the time when due, to have been $1,710. I was on board of the H. R. Smith before she started from here on her last trip, and had been there several times during the winter previous. She was in perfect order, and had been not a long time before newly rigged throughout. She would have commanded as high a price as any vessel of her character. And further saith not.

WILLIAM FARREN.

Taken, subscribed, and sworn to this 16th of June, 1855, before me.

C. R. INGERSOLL,
U. S. Com'r.

Agreement.

JOSHUA DILL and others
v.
THE FANNIE CROCKER and Claimants.

The testimony of witnesses examined in the district court of the United States for the district of Maryland, taken down by the undersigned United States commissioner, at the request of the proctors for the respective parties.

LEVIN GALE,
Com'r.

It is agreed that the testimony hereto annexed shall be read by either party in the above case on the appeal thereof from the district court.

JNO. H. B. LATROBE,
For Libellants.
BROWN & BRUNE,
For Respondents and Claim'ts.

Libellants' costs.....	$10
Claimants' costs.....	20
	$30

Evidence taken in open court for Respondents.

I reside in Taunton, Massachusetts. I was second mate of the Fannie Crocker on a voyage from Dighton, Massachusetts, to Baltimore, in March, 1855. We left Dighton, I think, on the 4th of March, in sand ballast; reached the Capes on the 9th or 10th of March, by sea time. We were under double-reef mainsail, foresail and jib. The weather was somewhat cloudy and thick, and it was blowing heavy. It would sometimes light up a little so that we could see some stars, and then it would cloud over again; the wind was blowing north-northwest, and there was a pretty heavy sea rolling. After we got inside of Cape Henry about two or three miles, when we were heading about west, or west half north, we attempted to tack. The vessel would come in the wind, and would not come about, but fall off on the same tack. We tried to tack, I think, three times, but failed every time. We did not succeed in tacking because we had not sail enough on, and it blew so hard we could not carry any more. The reason why a vessel cannot tack under such circumstances to that, she comes up to the wind and shivers, and the heavy sea stops her headway, and there is not power enough to carry her round. At this time the Fannie Crocker had on all the sail she ought to carry in such a wind. The wind was from the north-northwest, and blowing very heavy. The vessel being light in ballast, and the sea very heavy, it would throw

us off; we then put the wheel hard up and wore the ship, and came about in that way. That put us on the opposite course, and we then headed east-northeast.

When we wore the ship we put the wheel hard up, and that kept her off right dead before the wind, and the main boom then jibed over to the other side. Before the main boom went over, whilst wearing, we slacked the peak down so that it might jibe easy, and by slacking the peak the after bolt-rope of the sail caught over the end of the peak of the main gaff, and tore the sail about two-thirds away from the rope, and rendered the mainsail useless, so that we could not use it after that, and the sail was flapping in the wind.

In jibing over, Samuel D. Crane, one of the seamen, got his leg caught in the fore-sheet, and it was badly bruised; it threw him down on the deck, and we thought it was broke at first. All on board, except the captain, who was at the wheel, ran to get his leg clear. We got him clear; he was not able to do duty after that. To get his leg clear we had to cast off the sheet from the hook so as to slacken the rope and unloose his leg.

There were six on board, including the captain, viz: first and second mate, cook and two seamen; this left five persons fit to do duty after Crane was disabled. In releasing Crane's leg we had to ease off the foresail about two points and a half or three points; we then tightened up the foresail sheet and proceeded to haul down the mainsail, it being so badly torn that it could not be used; the peak halyards had been already lowered down, and the peak was hanging down, and the beam was over the side. When the throat halyards was lowered, the larger part of the mainsail, about two-thirds I think, went over into the water; it went over the starboard side, the vessel having the larboard tacks aboard. Crane had gone below; the capt'n was at the wheel, and the rest of the crew were engaged in endeavoring to get the sail in; there was water in the sail, which made it harder to get in. I suppose about two minutes after I got aft, and whilst I was at work getting in the sail, I looked to leeward and saw the schooner Henry R. Smith about two points and a half on our lee bow; she was about three times the length of our vessel off. (The Fannie Crocker is 106 feet long.) We were heading about east-northeast, and the Henry R. Smith was heading about northeast, I think, from the looks of her. I could not tell exactly, but that was about the course she was heading, I think. I saw the other vessel first, and hallooed to the other vessel to put *up* their helm up, and let their main sheet go; this would have let her fall off before the wind. I did not see that she altered her course at all. I also sung out to the capt. of our vessel to put his helm down, and the first mate sung out to put the helm hard up. I turned round and looked, and saw that the capt'n had the wheel hard down all the time, and that the vessel would not come

up into the wind. When the first mate sung out to put the helm up the capt. put the helm up, and *and* that kept the vessel off; the object was to make the Fannie Crocker pass under the stern of the other vessel. I don't think it was more than six or seven minutes from the time I saw the other vessel until the vessel struck. When I first looked at the Henry R. Smith there was a man at the helm, but when I looked a second time there was no one at her wheel. The object in putting the wheel hard up was to let our vessel go off, so that she would go under the stern of the Henry R. Smith. I think the Henry R. Smith luffed a little, but I would not be sure; she looked to me as if she had no headway at all. If both vessels had gone on in the same course without any change from the time I first saw the Henry R. Smith, our vessel would have run into her; by keeping off we ran into her anyhow, because we did not keep off quick enough.

Our captain put the helm up as quick as we saw the Henry R. Smith, but our vessel did not swing quick enough to avoid her; she swung off pretty quick, but *no* so quick as she would have done, if she had had more sail; the capt'n put the helm up as quick as it could be done. If we had seen the Henry R. Smith three or four minutes sooner, we could have cleared her; we had no special look-out; all hands were on the look-out. I have been to sea for 15 years. When all hands are called to take in sail, there is no particular one to look out; all hands look out; that is the usual practice. It was about 8 or half-past eight o'clock in the evening when the collision took place, and about twelve or fifteen minutes after the mainsail was torn.

If the Henry R. Smith had put her helm hard up when I hallooed to them, she would have avoided the collision; I did not see them put up the helm; it is only my opinion that the helm was not put up; the course of the Henry R. Smith would have been changed, if they had put the helm hard up; I don't think we could have seen the other vessel a half of a mile off; I don't think we could have seen her more than a quarter of a mile off; I could have seen a light on her a mile off, if she had had one; I did not see any light on her trunk. In my opinion the right thing to do aboard Fannie Crocker was to put the wheel up; the wheel being already down, and the vessel not luffing, the only thing to be done was to put the helm hard up.

I did not notice particularly, but I think the Henry R. Smith had a double-reef mainsail, a foresail and jib, up at the time; she was sailing nearer to the wind than we were; we were sailing as near the wind as we could in the condition in which we were.

The vessel struck a little on our larboard bow, and on the larboard quarter of the Henry R. Smith. When we struck, our anchor caught in the after shroud of the Henry R. Smith's main rigging, and that slewed us round pretty much alongside of her, and the crew of the other vessel got on board of our vessel, and they then

ran around and got an axe and cut the shrouds; the anchor went clear; and our sails being full, we went ahead; and the sails of the other vessel then filling, she went ahead and we went past each other. I did not see the Henry R. Smith after we got clear of her; I had too much to do to look after her; the jib-boom of the Fannie Crocker was carried away, and a good deal of her head rigging; she was repaired in Norfolk; I understood the repairs there cost about $500, but don't know myself what they cost; we got to Norfolk about seven days after the collision.

I did not hear any shouting or warning from the Henry R. Smith, as we approached her; I did not hear any one from her sing out at all; I did not see any light aboard of the Henry R. Smith; I did not notice any *any* light in her binnacle; I saw a light in the cabin when she was alongside, but that would not show on deck, or so that you could see it until you went and looked into the cabin; some vessels have arrangements so that the light of the binnacle lights up the cabin, and others have a light in the binnacle which does not show in the cabin; I did not see, and therefore cannot say, whether the light I saw lit up in the binnacle or not; it may have done so; if there had been a light on the top of the cabin or trunk of the Henry R. Smith, I should have seen it; whilst we were engaged in getting in the mainsail, all of the crew except the cook were aft the sail, and the sail was in such a position as to prevent us from seeing the Henry R. Smith; when I got up on the lazy board to reach over and pull up the sail, I saw the Henry R. Smith, and then sang out as I have before stated; I could not see her until I got up on the lazy board; I don't think we could have seen her, even if there had been no obstruction, much further off; she showed very thin when I did see her; the cook was just forward of the sail on the starboard side; the cook was in a position where he could have seen her just as well as if he had been forward; all hands were on the look-out; it is the duty of all hands aboard coasting vessels to keep a look-out; there is no regular look-out on coasting vessels; the cook was a black man. I could not have seen the land that night more than a half of a mile off, if that. After the collision, the Fannie Crocker went out to sea, because we had not sail enough to get her to a harbor.

I heard Capt. Dill, capt'n of the Henry R. Smith, talk about the collision; I don't recollect exactly what he said; I heard him say the Henry R. Smith was a bad vessel to steer. I heard him say that he thought Capt. Crane was crazy; this I understood him to say with reference to what Capt. Crane did after the collision had taken place; I also heard him say that if he had been aboard of the Fannie Crocker he would have done the same thing that Capt. Crane did.

Cross-examined.

I have sailed as second mate before in other vessels, but this was my first voyage in the Fannie Crocker. I could have seen a vessel of the size and appearance of the Henry R. Smith on that night a quarter of a mile off. I did not see her until she was three lengths of our vessel off.

When we attempted to tack three times as stated, we slacked off the fore-sheet a little. The sails we were then carrying were the proper ones to tack with; we were trying to get into Hampton Roads, and could not get there without beating. We had a double-reefed mainsail, a foresail and jib. I don't think we could have come around with a double reef in our foresail, but could have tacked. We would have been in a better condition to tack, and could have tacked with mainsail, foresail and jib, and no reefs, if she would bear such sail. She would have come around quicker. If we had stopped to reef foresail we would have gone ashore; we could wear quicker than we could reef foresail; we wore towards land; we lost more by wearing than by tacking; we would not have had time to reef foresail; we could wear quicker than reef the foresail. I could not see the land, but could say by the soundings that we would have gone ashore. We were heaving the lead every chance we got; the lead was thrown about three minutes before we wore ship; there was about four and a half fathoms of water; we must have then been a half of a mile from shore. We let the peak go before we wore. We did not lower halyards until the man's leg was caught; we did not intend to lower them until the sail was torn. The mainsail did not get into the water until we lowered the halyards. I did not see the Henry R. Smith until after the sail was down in the water. Before the sail was lowered we could go from side to side, and see all around. The cook was on the look-out whilst we were taking in the mainsail. I did not hear any warning from him. When I saw the Henry R. Smith, I called to put the helm hard down, and I looked around and saw that it was already down, and I then saw that it was necessary to put the helm hard up. The first mate had called out to put the helm hard up. If the helm of the Henry R. Smith had been put up, the vessels would have cleared each other and gone off side by side. I saw the Henry R. Smith before the helm was put up.

Re-examined.

When the helm was down, and it had been kept there, we would have struck the Henry R. Smith above the fore-chains; we would certainly have come into collision with her. The first mate sung out to put the helm hard up, as quick as I sung out, and the helm was put up as quick as we could speak. The captain commenced throwing the helm up immediately. The Henry R. Smith did not seem to fall off at all; her headway seemed to be gone.

Cross-examined.

No one called out on board of the Fannie Crocker before I did.

James Fields, for Respondents.

I was one of the seamen on board of the Fannie Crocker on her voyage in March last. I belong to Dighton, Massachusetts. On that voyage, after we got inside of the capes we made three attempts to tack, but could not get the vessel to tack. The wind was blowing north-northwest, I think. The captain was at the helm. When we attempted to tack, the wind knocked us off every time. The captain then said we would have to wear ship, and we did so. In wearing ship we dropped the peak of the mainsail; it caught on the gaff and tore the sail from the leach rope; this was done while the boom was jibing over. The tearing of the mainsail disabled the vessel. The fore-sheet in jibing caught one of the seamen, named Crane, around the leg, and threw him down; we all thought his leg was broken, and all hands except Capt. Crane, who was at the wheel, went to his assistance; we all thought Crane in a dangerous position; we loosened the fore-sheet and released him; he was rendered unfit for work, and went below; we then lowered the throat of the mainsail down, and a large part of the mainsail went over the side into the water; we then commenced hauling the sail in out of the water. The captain was at the wheel; Crane was below, disabled; and the cook was forward of the mainsail; all the rest were aft of the mainsail at work, getting it out of the water. Whilst we were employed in hauling in the sail, Mr. Frazier, the second mate, sang out that there was a vessel two points on our lee bow, and sang out to Capt. Crane to put the helm hard down; the first mate at the same time sang out to put the helm hard up. I saw the Henry R. Smith; she about three lengths of our vessel off. When the first mate sang out to put the helm hard up, it was done immediately. The cook helped the capt'n to put the helm hard up. She answered her helm pretty quick, as vessels generally do. If we had gone on straight ahead, we would have struck the Henry R. Smith somewhere about her fore-rigging. The helm was put hard up for the purpose of going under the stern of the Henry R. Smith. I did not see that the Henry R. Smith changed her course. I did not see any man at the wheel of the Henry R. Smith. When we struck I saw no light aboard of her, and heard no warning or hail from the Henry R. Smith.

In my opinion, the right thing to do under the circumstances on our vessel, was to put the helm up, as the first mate said. I think that if the helm of the Henry R. Smith had been put hard up, she would have cleared us; it would have swung her stern up, and the two vessels would have cleared each other. I think she had time to get around; and even if she had not got fully around, we would

not have hurt her if we had struck, because both vessels would have been going in the same direction. If the Henry R. Smith had eased off her main sheet, she would have gone around easier. We struck on our larboard bow on the larboard quarter of the Henry R. Smith. I think I would have seen a light on the trunk of the Henry R. Smith if there had been one there, and I *did* see any light. After the collision, the crew of the Henry R. Smith jumped aboard of the Fannie Crocker, and she put out to sea. We did not get to Norfolk for several days. I think if the mainsail had not been torn, we might have got into Hampton Roads, but can't say positively that we could have done so. The seas were very heavy and short. If the mainsail of the Fannie Crocker had not been torn, we would have sailed as near the wind as the Henry R. Smith, and would have gone to the windward of her, and avoided the collision. We could have sailed as near the wind, if not nearer than the Henry R. Smith.

The Fannie Crocker is a centre-board vessel, and could have sailed as near to the wind, if not nearer than the Henry R. Smith, if the mainsail had not been torn. I think the centre-board was two-thirds or one half down at the time.

Cross-examined.

I will be 19 years old in September. I have been going to sea a little upwards of three years. I have sailed all the time in fore-and-aft vessels. A vessel in ballast will sail nearer to the wind than one heavily laden. I am not positive, but don't know but she would lay a little nearer. The Fannie Crocker was sharp and had a light load, and though she might not have headed nearer to the wind than the other vessel, yet she would, in fact, sail nearer to the wind and lose less in her course; she would not make so much leeway. The Fannie Crocker and the Henry R. Smith would have come together if her course had not been altered, because the mainsail of the Fannie Crocker was disabled, and she could not, for that reason, sail as near the wind as the other vessel. She was disabled about from twelve to fifteen minutes before the collision. The boom of the mainsail did not extend over the side when it jibed. The sail was over in the water. All hands were busy getting in the sail when the second mate sang out. We did not get the sail in before the collision. When the Henry R. Smith was discovered, all hands left the sail for fear of being knocked overboard. I went around and stood in front of the mainmast; stood there about half a minute before the collision. I looked to see if there was a light on the Henry R. Smith, and did not see any. I could have seen a light, if there had been one. The fore-sail would not have prevented me from seeing a light, if there had been one. The shock when the vessels came together was a strong one. I held on by some ropes. It started me from my feet. When

I heard the cry "Sail ho! to leeward," I stopped working on the sail, and went around to windward, and came in front of the mainmast, as stated. The cook was not there by the captain, but was forward of the mast. He immediately ran to help the *the* captain to put the helm up. Mr. Frazier, the second mate, was the first who sung out. There was no particular person keeping a watch, but all hands were on the look-out. All hands keep a look-out when taking in sail, and we were all keeping a look-out and taking in sail at the same time. Can't say why Mr. Frazier was the first to see the vessel, except that there is always somebody that sees a vessel first.

Re-examined.

When all hands are called to haul in sail I have never known a man to remain forward to keep a look-out; all are expected to keep a look-out. I could see under the foresail from where I stood. The end of the boom is about six feet above the deck usually. At this time it was at least six to six and a half feet above the deck, for the sail was blown out so as to raise the boom somewhat. I could not say exactly how long it was from the time I heard the cry "Sail ho!" until the vessels struck. I think it was about three minutes.

Re-cross-examined.

The bow of the Fannie Crocker was high out of the water because she was light, but I could see over the bows on the Henry R. Smith. I did see down on the Henry R. Smith.

Samuel D. Crane, for Respondents.

I was a seaman on board of the Fannie Crocker in March last. I have been going to sea for four years, always in fore-and-aft vessels. The first mate I think is not in the country at this time. The weather on the night of the 9th March blew from north-northwest. The sea was running very high. When we got inside of Cape Henry we attempted to tack. We had on a double-reef mainsail, foresail, and jib. That was all the sail we could carry. The vessel had sand ballast. We attempted to tack three times, and did not succeed; it was blowing so hard and the sea was so heavy that the vessel would come up and fall off every time. The captain then gave orders to wear ship. On wearing, the leach of the mainsail caught over the gaff and tore the sail from the leach, and rendered the mainsail perfectly useless. When the foresail jibed my leg was caught in the fore sheet, and I was thrown down on the deck. All hands came to my assistance, except the captain, who was at the wheel, and I was released. I then crawled into the cabin on my hands and knees. I could not stand for a week afterwards, and of course could not do any work after that. I did not see the Henry R. Smith. I was in the gangway when the

vessels struck. The captain was at the wheel. I heard the first mate sing out to put the wheel hard up, and saw it done.

Examined by Judge Giles.

If we had not wore ship and kept on our course we would not have come near the other vessel, but we would have gone ashore. We went as close to the wind as we could after we wore.

Further Examination in Chief.

I saw the cook at the wheel when I heard the cry of "Sail ho!" I was near the gangway. I got upon one foot, and looked out of the door, and the mate gave the order to put the helm up, and the captain and cook put it up. I got up and stood on one foot for fear that there might be danger in remaining in the cabin.

Cross-examined.

I can't say how long I had been in the cabin before the collision took place. Can't say whether it was five minutes or not; it was not a half of an hour. My limb was not broken. I will be 23 years old in November. I am nephew to the captain of the Fannie Crocker. Mr. Frazier was the first person I heard cry out "Sail ho!" This was, I think, about five or six minutes before the collision. I did not see the Henry R. Smith. The Fannie Crocker would have gone ashore if we had not wore. I think so from the soundings. I heard the mate tell the captain that we were in four fathoms water. I did not see the land. When a vessel gets in four fathoms water she must be pretty near the shore. I don't think the vessel would lose four or five hundred feet in wearing. I think the Fannie Crocker would come around in three or four times her length. I think she would wear around in that distance, or less. I did not see the land at all. I could not see stars often; once in a while some stars would show out. I heard the cry to throw the helm up. The helm must have been up when we wore the vessel; but we had got on the tack, and the helm must have been altered after wearing.

Examined by Judge Giles.

The mainsail was torn in the act of wearing; this was nine or ten minutes before the collision, but I can't be certain as to the time. We were heading west by one-half north, before wearing; after wearing we headed about *by* northeast, or thereabouts.

Captain John G. Crane, for Respondents.

I was the master of the Fannie Crocker on her voyage from Dighton to Baltimore, in March last. I am not now interested in the vessel; I was at that time, but I sold out my interest to Capt. Cobb. When we were coming in the capes we took a squall, the wind from about north or north by west; the squall died away, and

I then had two reefs taken in the mainsail, and left the foresail and jib full; I thought I could, with that sail, work up to Hampton Roads. After we got fairly in, the wind came out very hard from about west, or west by ½ north. It was a very disagreeable night, and was blowing very hard; I was never out in but one blow that was harder; there was no moon, and a great many flying clouds; the stars would shine out once in a while. We attempted to tack three times, and the vessel would not tack; we had to alter our course, or we would have gone ashore; we lowered the main peak and wore, and the vessel came round; as the main boom and sail came over, a rope caught over the sail and tore the mainsail nearly down; as the mate and men attempted to ease off the fore-sheet, one of the men got his leg caught in the fore-sheet; all the men went to his assistance and released him as soon as they could, and he went below; the crew then went to try and get in the mainsail, which was overboard; pretty much all that was torn was in the water. I was at the helm; this was about eight or half-past o'clock at night. Our course was about east-northeast. The vessel would not come up close to the wind on account of the want of a mainsail; I sailed as close to the wind as she would go. The helm was put down to keep her up close to the wind, and it was kept down. I directed the steward or cook, a black man, to keep a look-out; he was somewhere about the mainmast on the look-out. The first mate sang out to me to keep the helm hard up, as quick as I could; as I was putting the wheel up, the cook came running aft to assist in putting up the helm. In three or four minutes we struck the other vessel; she struck on our larboard bow, and she was struck, as well as I could judge, about half way her trunk. I saw no light on board the other vessel; I think I should have seen a light, if there had been one. I could not say how far she was off when the alarm was given; she was going a little nigher to the wind than we were, perhaps a half of a point. If we had kept our course we would have gone into her; I am not certain, but that is my opinion. I could not see the vessel when the alarm was given, but I saw her before we struck; I did not see her before the helm was altered; our course was altered before I saw her; I saw her before we struck, as she stood out before our bow; when we struck, the other vessel had not altered her course, as far as I know; there was time enough for the other vessel to have altered her course; if she had put her helm hard up, she would have altered her course in three quarters of a minute; she had, I believe, a double-reef mainsail, a foresail and jib, on at the time—the same sail we had before our mainsail was disabled. We did not luff because the Fannie Crocker would not luff; the wheel was hard down, and she would not luff, and we could do nothing but put the helm up. The Fannie Crocker was as close to the wind as she would go, and would not luff; there was

nothing to do but to put the helm up. Eleven feet more and we would have cleared the other vessel. A loaded vessel can sail closer to the wind than one that is light; the Henry R. Smith was sailing above half a point nearer to the wind than the Fannie Crocker. I think the Henry R. Smith would have cleared us if she had put her helm up; she could not have gone round so soon as we could, but if she had her sail to cleet by loosening it, she would have gone round as quick as we could; she could, under these circumstances, gone round, I think, in three-quarters of a minute, and even if the *the* Fannie Crocker wore quicker than the other vessel; I think there would have been time enough to have passed under the stern of the Henry R. Smith, if she had wore about the same time; I think it was three or four minutes from the time the alarm was given until the collision. If the Henry R. Smith had wore about the same time, and we had come into collision, we should have struck her in the stern, and the most damage we should have done would have been to knock her boom up, and perhaps injured her stern somewhat, but could not have run over her, or seriously damaged her, as both vessels would have been going in the same direction. After we struck, all hands from the Henry R. Smith came aboard of us; and we had to put out to sea, as we could not make a port in the condition in which our sails were. In addition to the mainsail, the foresail had been considerably damaged; we did not get into Norfolk until seven days afterwards. In the collision we carried away our jib-stays, and injured the fore-rigging; the foresail was damaged in trying to get it down; this was because a block was broken in the collision. We had the *whole* repaired when we got in to Norfolk; the whole cost was about $500, of which $124 was for repairs to mainsail and foresail. I had a conversation with Capt. Dill, master of the Henry R. Smith. I said I was sorry for the collision, and Capt. Dill said he was sorry too, but that I had done the best I could, and that I could not have helped it. I asked him if he would give me a paper to the owners of the Fannie Crocker, stating that I had done all that was proper under the circumstances, and he said he would. At Norfolk I asked him again to give me a paper, and he rather avoided it, and I said no more to him on the subject.

Cross-examined.

I do not consider that the mate of the Fannie Crocker was a better seaman than I was; I consider myself a good seaman. When the mate sang out to put the wheel up, I did so; I did not exercise my own judgment. The mate sang out, "Sail, ho! put the wheel hard up." That is the way I understood him, and I put the wheel up; it was blowing a gale at the time. If the Fannie Crocker and the Henry R. Smith had both put their helms up at the same time, we should probably gone under the stern of the Henry R. Smith, and

it we had struck her, should have hit her in the stern, and would not have damaged her much. If both vessels had continued on their course, and have come broadside on, we might have both sunk. If I had let go the jib-halyards, the jib would not have come down; it would have taken a good while to get the jib down. If we had had time, it would have done to let the jib go, and then we would have luffed, but we had not time. It would not have taken more than a quarter of a minute to free the jib from the wind if we had a knife to cut the jib-sheet away; that would have left no sail but the foresail, but we could not think of everything at once. Anything that would have stopped our course would have prevented the collision. I did not attempt to let go jib-sheets or halyards; I wanted the jib to wear ship. The jib and foresail would not have come down if the halyards had been let go or cut, it was blowing so hard. If we could have deadened our course in any way, I would have done it; I did not attempt to do so by cutting jib-halyards or sheets. If the helm of the other vessel had been put hard up, and she had gone off before the wind, and the two vessels had come together, there would not have been much damage done—that is my supposition, but I can't say positively, as it did not happen.

The Fannie Crocker was under double-reefed mainsail, foresail and jib, when she attempted to tack. She would have tacked better with the mainsail without reefs in it, if she could carried it, but she could not carry a full mainsail with that wind. The reason she did not tack was, that there was a heavy sea; she would come up, and the sea being so heavy she would fall off every time. I did not take a reef in the foresail and the bonnet of the jib, because I had no time; I did not intend to do so. The sail we had was the proper sail. The reason we could not tack was, because the seas was so heavy.

Captain Daniel Burnett, for Respondents.

I command the schooner West Wind—a vessel of 247 tons, near the size of the Fannie Crocker—a little larger. I sailed from New York in the West wind on the evening of the 5th March last; it blew very fresh, about north by west. At first was under land, and did not feel it so severely. After we got clear of the land, it blew very heavy, and there was a very heavy sea. As a general thing, when we find it necessary to take in sail, we commence by taking two reefs in the mainsail; if that is sufficient, we don't reef the foresail. The more sail a vessel can carry, especially a centre-board vessel, the better. A vessel with double reef in the mainsail, and full foresail, would tack as easily as if the foresail was reefed; I would not reef the foresail, unless it was blowing so hard that I could not carry it. If I had been in command of the Fannie Crocker, she *was* going as close to the wind as she could, the Hen-

ry R. Smith heading one point near the wind, and three lengths off, the Fannie Crocker being in ballast with mainsail disabled, and the Henry R. Smith deeply laden, I should have thrown the wheel up; that I should consider the proper thing to do under the circumstances. A light vessel will not hang as near the wind, and would certainly come in contact with the deeply laden one, unless the deeply laden one would keep out of the way of the light vessel, put her wheel hard up, and go under the stern of the other; that was the only way to avoid a collision. If I had been at the wheel, and the mate or any one on the look-out had called out to put the wheel up, I should have obeyed the order.

I have been a master of a vessel engaged in the coasting trade off and on since 1836. When we are limited for men, all hands are expected to keep a look-out, and there is no particular one assigned to that duty. At such times we can't spare a man to keep a look-out, and every man must keep the best look-out he can; I am always in the habit of having a look-out when coming up the Chesapeake bay, unless I am very short of hands. It is not a custom always to keep a light coming up the bay; some do it, but it is not general; I always keep a light at the binnacle. I should not think it my duty to have a look-out when wearing on a lee shore; I should consider that I had use for all my men in wearing; I should think that the man on the quarter-deck could keep a look-out.

Cross-examined.

If there is one man not at work, he ought to keep a look-out. If the cook should give warning, I would attend to it. As a general rule, coming up the bay, the look-out is stationed forward. If a vessel could have been seen at a quarter of a mile off, a man who had nothing else to do but look out ought to have reported her before she got within one hundred yards; and if a vessel were seen a quarter of a mile off, could have gone free of her easier than when she was within one hundred yards.

Captain Morris Osborne, for Libellants.

If I had been in command of the Fannie Crocker, and she had been going as close to the wind as she could, and the Henry R. Smith had been about three lengths off, heading one point nearer to the wind, the Fannie Crocker sailing faster, being in ballast and mainsail disabled, and the Henry R. Smith deeply laden, I should have let the jib run down, and put the helm down; the foresail would have shivered, and the vessel come partly up in the wind and lose her headway, and leave time to the Henry R. Smith to go ahead. If the helm were already down, the jib should have been let go, and the vessel would come up considerably; the foresail would shiver and the headway of the vessel be considerably

deadened. I think the jib would have come down part of the way anyhow; it would then hold part of the wind, but not so much if the jib would not come down; letting the jib-sheet go or cutting it would have the same effect as running it down. There is a down-haul to the jib. In a general way, the jib would come down from its own weight. You could scarcely let go the halyards before the jib would be partly down; this could be done in a minute. Sometimes when the halyards are new the jib will not come down so readily. I have sailed at least 25 different schooners. A vessel sails best when her sails balance each other; that is, when the mainsail, foresail, and jib are proportioned to each other. The sails are fitted to a vessel to balance each other. A good sailing-vessel will carry her tiller fore and aft a little to the weather.

Cross-examined.

Of two vessels, the one, when it is not disabled and is heavier laden, will sail near to the wind; the other vessel would make leeway. If I had been in the Henry R. Smith, and had seen the Fannie Crocker coming up towards us at the distance of a half or a third of a mile, I should have continued my course. I think that the vessel which outsails me must keep clear of me; if she would not run under my stern and keep clear of me, she might run into me. If I were on a disabled vessel, and alarm given that there was another vessel a hundred yards off on our lee bow, it would depend on circumstances what I would do. I consider it better to keep on than come round and run into the other vessel, because a collision under such circumstances is always a dangerous one. If, on the other hand, you keep your course and run into the other vessel, there is not likely to be much damage. If the other vessel had let go her main sheet and put her helm up, she might have gone free. It would depend very much upon my crew whether I could have got the men forward and let the jib down in time. I most always keep a man forward on the look-out, generally all the while; nine-tenths of the accidents occur from carelessness in this respect. On some very special occasions it may happen that I cannot spare a man forward to keep a look-out. I have four men on the vessel which I sail; she is 217 tons.

Captain Moses Howell, for Libellants.

If I had been aboard the Fannie Crocker, she in ballast, mainsail disabled, and the Henry R. Smith had been discovered about three lengths off, deeply laden, sailing about one point nearer the wind, and we going faster than she was, it would depend upon circumstances what I should have done. I would be able to tell better if I had been aboard the vessel. I should want to see the position of the other vessel before deciding what to do. I think I should have tried to get my vessel in the wind, because I should

not suppose I would have been able to wear in time; if I thought I could wear in time, I should certainly have done it. If the headway of the vessel could be lost, that would prevent a collision. If the Fannie Crocker had come into the wind and the two vessels had come together broadside, that would not have done much damage. I would have tried to let the jib down and the fore-sheet run free; if I had no mainsail, would have been in a bad predicament to get into the wind, but I should have let the jib go, and if she had been four points off she would have come up two points. If I have double reef in mainsail, I can't work with foresail and jib full; I should take a bonnet off the jib. I have seen vessels that would sail with double-reef mainsail, and full foresail and jib, but my vessel will not; she is 184 tons; is not a centre-board vessel; centre-board vessels come round quicker. My practice is always to have a look-out. The fact of the mainsail being torn and *drag* in the water would not prevent me from having a look-out. I should have put the steward foward to look out under such circumstances.

Cross-examined.

No man at night under the circumstances could tell how far apart the two vessels were. I would not have put the wheel hard up, upon the mate singing out. I would have called some one else to the wheel and gone forward and looked first for myself. All depends on circumstances, but I should have gone forward and looked before altering my course. If the mate were to call out to me on a dark night, when I was at the wheel, to alter my course, I would first go forward and look for myself. The mate commands when I am below, and if I were in the cabin, he would have to do what he thought best; but I don't usually trust to the mate, but act on my own judgment. If the mate were to sing out to me that there was a vessel ahead, and to alter my course, I would sing out to him to know which way she was heading, and it would depend on circumstances what I should do then. A loaded vessel will sail nearer to the wind than one that is light and disabled. If I were in a vessel and found that another vessel was coming down towards me, I would try to get out of her way; if I could alter my course two points I would do it, and not let the other vessel run into me. If the other vessel were drifting down on me I would keep off; I should be bound to keep off if I could. If I had been in command of the Fannie Crocker and had an idea that I could clear the other vessel by going under her stern, I would have done it of course; I would have taken that course which I supposed would avoid coming together. It would take my vessel four minutes to wear; a centre-board vessel would not take so long.

Re-examined.

If I had been in a vessel, and another vessel was coming down towards me on a similar course, I would have supp'ed that she intended to go to leeward.

Captain George Weeks, for Libellants.

If I had been aboard the Fannie Crocker, she being light in ballast, with mainsail disabled, and discovered the Henry R. Smith on our lee bow about three lengths off, laden deeply, and sailing one or two points nearer to the wind, I would have kept straight ahead as I could; the damage done by coming into her sideways, would not be as great as they would be by coming round and running into her in that way. I have been going to sea for the last twelve years, and been commander of a vessel for the last two years. If there are two reefs in the mainsail, the vessel will come around easier by taking a bonnet off the jib.

If I were in a vessel, and another vessel were coming down towards me, I should have kept straight ahead, because I should have supposed the hindmost vessel would keep to leeward; I always keep a look-out. Sometimes the look-out may be called away for a moment; but I generally keep one constantly on the look-out; I generally keep a light up coming up the bay.

Cross-examined.

Of course a master in command, situated as the Fannie Crocker was, would go under the stern of the Henry R. Smith if he could, and if he thought he could do so, would attempt it. If I had been in the Henry R. Smith, I should have done the best I could to prevent her from running into me. I should *have* the best thing to do was to keep ahead. If I had seen the Fannie Crocker coming down towards me, and I thought she did not see me, I should have my signal-light and put it on the trunk, near the stern, and keep on my course.

Decree.

In Admiralty, in the District Court of the United States for the district of Maryland.

DILL and others
vs.
THE SCHOONER FANNIE CROCKER.

The counsel for the parties in this cause respectively intervening, were heard by the court, and their arguments, together with all and singular the proceedings and testimony in this cause, were heard by the court, maturely considered; and it appearing to the court that the circumstances under which the collision complained of by the libellants took place were such as to make the schooner

Fannie Crocker liable for the damages consequent thereon; and it appearing further to the court, that such damages amount to the sum of five thousand nine hundred and ten dollars: it is thereupon, on this ninth day of June, in the year 1855, by me, William F. Giles, judge of the district court aforesaid, and by the power and authority of this court, ordered, adjudged and decreed, that there is due to the libellants the sum aforesaid. And it is further ordered, adjudged and decreed, that the stipulators in said cause, viz: Thomas Whitridge, do pay unto the said libellants the said sum, together with all costs, within twenty days from the date of this decree; and if said debt and costs be not paid within the time aforesaid, it is further ordered and decreed, that the marshal shall proceed, after giving the usual notice, to sell the said schooner Fannie Crocker, with her tackle, apparel and furniture, for cash, and bring the proceeds of said sale into this court to satisfy this decree and costs, and that the residue, if any, shall await the further order of the court in the premises.

WILLIAM F. GILES.

From which said decree so as aforesaid passed the claimants and owners of the said schooner Fannie Crocker, by their proctors, in open court here, have prayed an appeal to the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in November next, and to them it is granted.

Thereupon it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same are hereby transmitted accordingly.

Appeal Bond.

Know all men by these presents, that we, Thomas Whitridge and Horatio L. Whitridge, are held and firmly bound unto Joshua H. Dill, James C. Woodward, Lyman Woodward, Joseph Ames, Ansen Burns, Isaac H. Foot, Stephen Rowe, Thomas Grannes, James Mallory, Henry Rowe, and Nehemiah Smith, in the just and full sum of eleven thousand dollars, lawful money of the United States, to be paid to the said Joshua H. Dill, James C. Woodward, Lyman Woodward, Joseph Ames, Ansen Burns, Isaac H. Foot, Stephen Rowe, Thomas Grannes, James Mallory, Henry Rowe, and Nehemiah Smith, their heirs, executors, administrators or assigns, to which payment well and truly to be made and done, we hereby bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this second day of July, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas, at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the

first Tuesday in June, in the year of our Lord one thousand eight hundred and fifty-five, the said court made and passed the following decree.

"The counsel for the parties in this cause respectively intervening, were heard by the court, and their arguments, together with all and singular the proceedings and testimony in this cause, were by the court maturely considered; and it appearing to the court that the circumstances under which the collision complained of by the libellants took place were such as to make the schooner Fannie Crocker liable for the damages consequent thereon; and it appearing further to the court that such damages amount to the sum of five thousand nine hundred and ten dollars: it is thereupon, this ninth day of June, in the year 1855, by me, William F. Giles, judge of the district court aforesaid, and by the power and authority of this court, adjudged, ordered, and decreed that there is due to the libellants the sum aforesaid. And it is further ordered, adjudged, and decreed that the stipulator in said cause, viz: Thomas Whitridge, do pay unto the said libellants the said sum, together with all costs, within twenty days from the date of this decree; and if said debt and costs be not paid within the time aforesaid, it is further ordered, adjudged, and decreed that the marshal shall proceed, after giving the usual notice, to sell the said schooner Fannie Crocker, her tackle, apparel and furniture, for cash, and bring the proceeds of sale into this court to satisfy this decree and costs, and that the residue, if any, shall await the further order of the court in the premises."

From which said decree, so as aforesaid passed, the owners and claimants of the said schooner Fannie Crocker have prayed an appeal to the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in November next:

Now, the condition of the above obligation is such, that if the said owners and claimants of the said schooner, Fannie Crocker, shall well and truly prosecute with effect their said appeal, and pay unto the said Joshua H. Dill, James C. Woodward, Lyman Woodward, Joseph Ames, Ansen Burns, Isaac H. Foot, Stephen Rowe, Thomas Granness, James Mallory, Henry Rowe, and Nehemiah Smith, their heirs, executors, administrators or assigns, the amount of the said decree and costs adjudged unto them by the said district court, and also all such damages, costs, and charges as may be awarded unto them by the said circuit court in case they, the said appellants, shall fail to make good their said appeal, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

THS. WHITRIDGE, [SEAL.]
H. L. WHITRIDGE. [SEAL.]

Signed, sealed, and delivered in presence of—
J. A. WHITRIDGE.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the district court aforesaid, I hereunto subscribe my name and affix the seal of the said [SEAL.] district court, the eighteenth day of August, in the year of our Lord one thousand eight hundred and fifty-five.
THO. SPICER, *Clk. Dist. Ct.*

Deposition of T. J. Clare, witness for appellants, taken before Levin Gale, U. S. Com'r, at the city of Baltimore, 22d October, 1855.

I reside in the city of Baltimore. I have been in the habit of raising vessels that have been sunk. On the 3d of April, 1855, a gentleman, who wrote his name as J. H. Dill, called on me and asked if I was engaged in raising vessels. I stated that I followed that business occasionally. He then stated that the Henry R. Smith was sunk somewhere in the vicinity of Cape Henry. He stated the situation of the vessel and her cargo, &c., consisting of oysters, which would be good for nothing after being down for twenty-four hours, and also stated that the masts were partly above water; and I then, after some consideration, told him that if he would point out the vessel I would raise her and put her in the port of Norfolk for $1,500 in cash, or 75 per cent. of the value, by appraisement or arbitration. I gave him that on paper, or a card with the address of Bakers, Norfolk, who raise vessels. He was then going to Bakers down to Norfolk, in the boat that afternoon, and consult them, and then go home to his owners, and was then to give me written authority or notice what to do. I felt myself bound to this offer until the first day of May, by which time he was to give me information. I had other engagements to raise sunken property following the first of May. He gave me his address. The paper which I now produce contains his address, which was written by himself. He stated that he was the captain of the vessel that was sunk, and I think he stated that he was also part owner; the memorandum on the paper produced, (which is herewith returned, marked T. J. C. No. 1,) in pencil, was made by me at the time; the address in it was written by the person who gave his name as Capt. J. H. Dill; he was rather taller than I am. I never heard from him afterwards.

The Bakers were wreckers of Portsmouth, and the object in referring him to them was to enable him to go to work at once if he chose to employ them, or could make a better bargain with them.

I came at the estimate of $1,500, or 75 per cent., by inquiring of Capt. Dill what the vessel was worth before she sunk. His estimate was from $4,500 to $5,000, or about that, and I based my estimate on $4,500. My estimate was based upon this view: When

a vessel is sunk the sails and rigging are almost a total loss. A vessel of that character, I supposed the sails and rigging would be worth twelve or thirteen hundred dollars. The rest of the calculations of the damage was for chafing, painting, and such other damage as might have been done. I estimated the vessel as worth at the bottom $2,500. I could not say what she would be worth in Norfolk. I had no estimate of her value in Norfolk, for I could not say what would be her value as appraised; that would be indefinite. Capt'n Dill seemed to think that the vessel had not received any very severe injury in her hull; that was his supposition. He supposed that some of the planks were started. The buts are where two planks come end to end on a curved surface and are started by the concussion. It would not have been very expensive to repair if the buts had only started and the timbers had not been much crushed.

I made no estimate of what it would cost to repair the vessel and refit her with rigging if carried to Norfolk. I think the cash charge of $1,500 for raising the vessel was the cheaper offer than 75 per cent. on her value. We usually make the cash charge the cheaper and better for the parties—some three or four hundred dollars in this case—for that saves all trouble as to the estimate; and arbitration sometimes gives trouble, and we therefore prefer cash, with no further trouble about it. My idea, as derived from Capt'n Dill, was, that the vessel was not much injured below. I could not form any estimate as to what it would cost to refit her. The property is of that kind, that it is difficult to form any estimate when it is below water. If the vessel had been raised in March, April, or May, the standing rigging would not have been materially injured; it would not be much injured until the water began to get warm. From the conversations with Capt'n Dill, I supposed the vessel to be worth, as she lay, $2,500.

Cross-examined.

The whole matter of raising vessels is something of a lottery; the vessel *raises*, of course, *from* an estimate for themselves. It is a precarious business to raise vessels. I should not think that storms at sea would affect a vessel lying on the bottom in the position that this vessel was. If the side of the vessel had been stove in, the value of the vessel would have been lessened, but there would not have been any greater difficulty in raising her.

I have raised property at a loss to myself. I have no other means of knowing the condition of this vessel than the statements of the person I have mentioned. I do not know how long her masts, in fact, continued out of the water. If her masts had disappeared it would have been difficult to find her; the parties who were aboard, I suppose, could show where she was. I know now the places where vessels were sunk, of which there is not now the slightest vestige.

I know nothing of my own knowledge when the vessel was sunk; I think Capt'n Dill said the vessel was sunk in the evening, but am not certain that he said so.

Oct. 22. THOS. J. CLARE.

Appellants' Exhibit, T. J. C. No. 1.

Capt. J. H. Dill, Fair Haven, Con.

H. R. Smith, $1,500, or 75 p. ct.

Deposition of Wm. Farren, witness for appellees, taken before Charles R. Ingersoll, U. S. Com'r for the district of Connecticut, at the city of New Haven, on the 24th September, 1855.

And the said William Farren, having been by me first cautioned and sworn to testify the whole truth, did thereupon depose and say as follows:

I, William Farren, of East Haven, in New Haven county, and State of Connecticut, being duly cautioned and sworn, do depose and say:

I am thirty-six years of age, and am by occupation a mariner. I have been master of a number of vessels sailing out of Fair Haven, Connecticut. I built the schooner Henry R. Smith, the same schooner that was lost by collision in the Chesapeake bay; I owned an eighth in her for two years after she was built: I have also owned interest in various other Fair Haven vessels; I sold my interest in the Henry R. Smith to Capt'n Joshua Townsend, of Fair Haven. Captain Townsend sold the same interest to Capt'n Joshua H. Dill in the year 1853. I negotiated that sale to Capt'n Dill as the agent of Capt'n Townsend; Capt'n Dill paid for it at the rate of $4,400 for the whole vessel. The reason that the vessel did not sell at a higher rate at that time was, that she was in a very bad condition—as bad as she could be, for the purpose of a sale; her jib-boom was gone, and her standing rigging was so entirely gone that a new set had to be put on her before she could go to sea. While Capt'n Townsend owned in her, the master who had been in charge did not conduct to the satisfaction of the owners, and they discharged him. He had run the vessel down to the state I have described, which was as low as she well could be run down. Capt'n Townsend heard of this in New York, just as he was ready to cast his lines off and go to sea, and he wrote me to sell out his interest in her before she left the dock; under these circumstances I was obliged to put a price on her to induce some one to buy her. I found a customer, at the price I have named, in Capt'n Dill, and he bought her. She had other repairs made on her besides those I have stated; her cut-water had been knocked off; she had to have some new running rigging, and had to be recaulked. If she had been in good order at that time she would have sold for $5,500; she was put into complete order by her owners after this sale to

Capt'n Dill. I consider that she depreciated about $500 from this time till the time of her loss. This depreciation resulted entirely from her age, in my opinion, for she was in tip-top order at the time she was lost. I was on board of her often, every three or four weeks, and was familiar with her condition; she was a well built vessel, built of the best stock that could be got. At the time of her loss she stood in the market among vessels of the first class of her age; she had no bad qualities, and she had a good reputation. And further saith not.

WILLIAM FERREN.

Taken, subscribed, and sworn to at New Haven, this 24th day of Sept., 1855, before me.

C. R. INGERSOLL,
U. S. Com'r.

Deposition of Samuel Henningway, witness appellees, taken before C. R. Ingersoll, U. S. Com'r, at New Haven, in the district of Connecticut, on the 29th September, 1855.

I, Samuel Henningway, of East Haven, in New Haven county, in the State of Connecticut, aged 43 years, being duly cautioned and sworn, do depose and say: I am by occupation a merchant, and principally engaged in selling cargoes of oysters, and business of that nature. This business leads me into an acquaintance with the various vessels owned in Fair Haven. I was well acquainted with the schooner Henry R. Smith from her construction down to the time of her loss. In my former deposition given in this case I represented her value at the time of her loss at $5,000; I now think that that sum was her just value at that time. I know that an interest in her was sold by Capt'n Townsend to Capt'n Dill at a less rate for the whole interest than $5,000 would be; and previous to that there had been *and* interest sold to Isaac H. Foot and Anson H. Burns at a less rate than $5,000 for the whole. The reason for the sale to Cap'n Dill being made at the price referred to was, that the vessel had been run bare, and was out of order; her rigging was gone, her hull was out of order; she had to be caulked, and to be thoroughly overhauled. The person who had been captain of her had left her, and a proper person had not been got to supply his place, and consequently she had run down; there had been no one to take proper care of her. When she left the port on her last voyage, she had been put in complete order, and had a proper captain in charge of her. In the Fair Haven market she was then ranked with any vessel of her age. The Fair Haven vessels are generally owned in small interests, eighths and sixteenths, and a person holding one of these interests will frequently sell out for a less rate than the whole vessel would bring. An improper captain will often run down a vessel in the market so that her stock will depreciate, and the interests will be sold for

much less than her real value. At the same time the entire vessel, if sold, might bring her value. The sale to Foot and Burns was made about six months before the sale to Capt'n Dill, and the vessel was then in a bad condition. That sale was made by an administrator of two deceased owners, and was a forced sale. At the time of her loss it cost more in every way to build such a vessel than it did when the sales were made to Capt'n Dill and to Foot and *Barnes;* the value of all such vessels had increased.

And further deponent saith not.

SAM'L HENNINGWAY.

Taken, subscribed, and sworn to this 29th of Sept'r, 1855, before me.

C. R. INGERSOLL, *U. S. Com'r.*

Deposition of Barnabas Baker, witness for appellees, taken before John T. Francis, U. S. Commissioner for the eastern district of Virginia, at the city of Norfolk, on the 22d October, 1857.

I am engaged in the wrecking business. Some time about the middle of March, 1855, I was applied to by Capt. J. H. Dill to go down and examine the schooner H. R. Smith, sunk just inside of Cape Henry, in the channel, about W. N. W. from the cape, in six fathoms water. Some few days after Capt. Dill applied to us—that is, about the 18th of the month—I went down to the schooner with my hands and two vessels for the purpose of raising the schooner, having entered into a contract with Capt. Dill to do so; we got down to the sch'r and remained by her about two hours, and made an examination of her condition. The schooner was entirely sunk, with about 20 feet water over her deck. Before we could make any arrangements to go to work, it came on to blow, and we were compelled to leave. Some few days after that, when the weather had become good, and the blow had abated, we went down again; we then found both masts gone, and we would not been able to have found her location had it not been for the end of the main boom, which was sticking up in the water, and held underneath by the rigging of the schooner. We then sounded round the schooner with leads and poles, and found that she had settled so far in the sand that it was impossible to get hold of her. We remained by the schooner some four or five hours, but found that we could do nothing with her; we could not even get up her chains and anchors. The position of the schooner was a very exposed one. She lay in the course of the current, and in the seaway, and a vessel in her position would settle very rapidly in the sand. When we first went down to the vessel there was very little hope of raising the sch'r, even if the storm had not come on and prevented our working. At our second visit we found the chance of raising her worse, but we did all we could, and found that it was impossible to raise her. Capt'n Dill agreed to pay us 75 or 80 per cent. of every-

thing that we could save, whether we saved the whole or a part. The schooner was about 140 tons burthen, and was loaded with oysters carried from Nansemond river to New Haven.

BARNABAS BAKER.

JNO. T. FRANCIS, *U. S. Com'r.*

Decree.

Before the Circuit Court of the United States, in and for the 4th circuit and district of Maryland.

THE OWNERS AND CLAIMANTS OF THE SCHOONER FANNIE CROCKER, Appellants,
vs.
JOSHUA DILL and others, Appellees.

Appeal from the decree of the district court of Maryland, sitting in Admiralty.

The above cause being ready for hearing, and having been argued by counsel and fully considered, it is thereupon, this 4th day of June, 1858, adjudged, ordered, and decreed that the decree of the said district court be, and the same is hereby, affirmed with costs.

R. B. TANEY.

From which said decree so as aforesaid passed, the owners and claimants of the said schooner Fannie Crocker, by their proctors, in open court here, have prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, and to them it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

Appeal Bond.

Know all men by these presents that we, Thomas Whitridge, Horatio L. Whitridge, and Edward R. Lusby, are held and firmly bound unto Joshua Dill, James C. Woodward, Lyman Woodward, Joseph Ames, Ansen Burns, Isaac H. Foot, Stephen Rowe, Thomas Granness, James Mallory, Henry Rowe, and Nehemiah Smith, in the just and full sum of eleven thousand dollars, lawful money of the United States, to be paid to the said Joshua H. Dill, James C. Woodward, Lyman Woodward, Joseph Ames, Ansen Burns, Isaac H. Foot, Stephen Rowe, Thomas Grannes, James Mallory, Henry Rowe, and Nehemiah Smith, their heirs, executors, administrators, or assigns, to which payment well and truly to be made and done we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this first day of December,

in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore on the first Tuesday in June, in the year of our Lord one thousand eight hundred and fifty-five, the said Joshua H. Dill, James C. Woodward, Lyman Woodward, Joseph Ames, Ansen Burns, Isaac H. Foot, Stephen Rowe, Thomas Granness, James Mallory, Henry Rowe, and Nehemiah Smith, by the decree of the same court recovered against the schooner Fannie Crocker, and Thomas Whitridge, Horatio L. Whitridge, and Edward R. Lusby, stipulators for the said schooner Fannie Crocker, the sum of five thousand nine hundred and ten dollars, together with all costs, from which said decree so as aforesaid passed the owners and claimants of the said schooner Fannie Crocker prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in November then next:

And whereas, also, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-eight, by the decree of the same court, it was adjudged, ordered and decreed, that the aforesaid decree of the district court be affirmed with costs; from which said decree, so as aforesaid passed, the said owners and claimants of the said schooner Fannie Crocker prayed an appeal to the Supreme Court of the United States, to be held at the city of *of* Washington on the first Monday in December next:

Now the condition of the above obligation is such, that if the said owners and claimants of the said schooner Fannie Crocker shall well and truly prosecute with effect their said appeal, and pay unto the said Joshua H. Dill, James C. Woodward, Lyman Woodward, Joseph Ames, Ansen Burns, Isaac H. Foot, Stephen Rowe, Thomas Granness, Henry Rowe, and Nehemiah Smith, their heirs, executors, administrators, or assigns, all such damages, costs, and charges as may be awarded unto them by the said Supreme Court in case they, the said appellants, shall fail to make good their said appeal, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

THOS. WHITRIDGE, [SEAL.]
H. L. WHITRIDGE, [SEAL.]
EDW'D R. LUSBY. [SEAL.]

Signed, sealed and delivered in presence of—
DALRYMPLE WILLIAMS.

Bond approved 4 Dec., 1858.

WILLIAM F. GILES.

5323

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name, and affix the seal of the said circuit court, this day of December, in the year of our Lord one thousand eight hundred and fifty-eight.

[SEAL.]

THO. SPICER,
C'lk Circ't C't.

Filed 21 Dec., 1858.